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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MYRICK TANTIADO, an individual,

Case No. C 07-02874 CRB MED

Plaintiff,

VS.

POWER MEDICAL INTERVENTIONS, a Pennsylvania corporation, and DOES ONE through FIFTY, inclusive,

Defendants.

**DECLARATION OF MYRICK
TANTIADO IN OPPOSITION TO
DEFENDANT POWER MEDICAL
INTERVENTIONS, INC.'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Hearing Date: September 5, 2008
Time: 10:00 a.m.

Judge: The Hon. Charles R. Breyer
Courtroom: 8

Original filing date: April 6, 2007
Removal date: June 1, 2007

I, MYRICK TANTIADO, declare and state as follows:

1. I am the plaintiff in this lawsuit and a resident of San Francisco, California. I have direct personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.

1 2. I took a position as a Sales Representative with defendant Power Medical
2 Interventions ("PMI") in or about July, 2004. PMI fired me on or about July 10, 2006.

3 3. Before PMI fired me, I had told Robert Chase on several occasions that I was
4 becoming increasingly uncomfortable selling PMI's circular stapler system. I had explained to
5 Mr. Chase that I and other PMI sales representatives had been receiving reports from numerous
6 physicians that this product was harming patients. We had also been receiving reports from our
7 fellow sales representatives and managers that particular defective "lots" (production runs) of
8 this product were being placed on the market. We also knew that PMI was doing little or
9 nothing to ensure that these defective products were not used on patients. This was common
10 knowledge among the sales team and I had discussed this with Mr. Chase on several occasions,
11 and there is absolutely no question he understood that this was the reason why I was no longer
12 comfortable selling the product.

13 4. On the last weekend in June, 2006 – a little over one week before PMI fired me –
14 I spoke with Mr. Chase at Moscone Center during the Annual Meeting of the American Society
15 of Bariatric Surgeons. During that meeting I told Mr. Chase for the first time that I was no
16 longer willing to sell the stapler product because I believed it was harming patients contrary to its
17 intended purpose. During this conversation, Mr. Chase and I discussed the possibility that PMI
18 might fire me as a result of my decision.

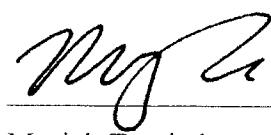
19 5. PMI fired me about one week after I had this conversation with Mr. Chase.

20 6. I am not a lawyer and I have never had legal training. At the time of my
21 conversation with Mr. Chase, I did not know which specific laws governed the sale of PMI's
22 stapler product. However, I did know that PMI was not supposed to sell defective products
23 under FDA-related laws.

24 7. PMI never informed me in any manner, oral or written, that PMI had a policy to
25 reduce out-of-pocket expense reimbursements as a result of product returns.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

1 Executed this 14th day of August at San Francisco, California.
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